IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 509

MALCOLM B. DEVERS,
Petitioner

vs.

CAPITAL INVESTORS CO., MARIAN A. MORRISON,
ARTHUR R. MORRISON,
Respondents

BRIEF OF ARTHUR R. MORRISON, IN SUPPORT OF PETITION AS TO ONE QUESTION RE-STATED BY HIM

This brief is submitted on behalf of Arthur R. Morrison, a respondent, who supports the petition as to the issues raised by Petitioner's Question 5, which he restates below.

QUESTIONS PRESENTED

1. May a Court of Appeals of the United States ignore the decision of this Court in Peck vs. Heurich, 167 U.S. 624, and enforce an admittedly champertous contract entered into in the District of Columbia when this Court in Peck vs. Heurich held such contracts illegal and void?
2. May a Court of Appeals of the United States ignore the sustantive law of the Commonwealth of Virginia and enforce a contract with respect to Virginia lands which is admittedly champertous and illegal under the applicable decisions of the highest Court of that Commonwealth?

STATEMENT OF FACTS

In March, 1962 certain valuable lands in Rosslyn, Virginia, were conveyed to Malcolm B. Devers as trustee for Arthur R. Morrison in connection with a property settlement between Arthur and Marian Morrison in anticipation of their divorce. Malcolm B. Devers took this property subject to certain existing first mortgages and a new second mortgage in favor of Mrs. Morrison. Thereafter a dispute rose between Mr. Morrison and Mr. Devers, who asserted that he held the lands in question not as trustee but in his own interest.

In May, 1963, during this dispute, Mr. Morrison entered into a contract in the District of Columbia (Exhibit 21) with Capital Investors Co., a wholly owned corporation and alter ego of James T. Benn and, pursuant to that contract, assigned whatever interest he had in the Rosslyn and other lands to Capital Investors Co., in return for a promise from Capital to bring an action to recover the equity of the lands in question from Mr. Devers, and, in the event of recovery, to pay him within five years $1,000,000.00 from the proceeds on certain agreed terms.

Thereafter, in July, 1963, Mr. Benn caused Mr. and Mrs. Morrison to enter into a new contract with Capital, also in the District of Columbia (Exhibit 34), and to make new conveyances to Capital of their interest in the Rosslyn lands pursuant to this contract in return for a promise to clear the titles to the Rosslyn lands and to pay them $1,000,000.00 from the proceeds within a stipulated period.

In both contracts Capital Investors' obligation was limited to its unsecured, non-negotiable notes. Capital Investors had no assets other than the contract in question and the interests conveyed pursuant to it.

Counsel for Capital Investors in a brief filed in the Court below accurately characterized the July agreement, on which this action was brought, as follows:

"They sold claims to the land based upon alleged oral agreements and directly opposed by all written agreements and to the record ownership. *They had nothing to sell, in effect, but a law suit, offering slender hope of success.* . . . As stated above *this was not a sale of land but only a salvage operation* in which an attempt to extricate the Morrisons was made *upon an agreed basis for dividing the fruits of the effort, if any.*

The mechanics were well suited to the purpose. The notes given Marian and Arthur were non-negotiable, thereby foreclosing intervention of third parties, especially a bona fide purchase for value. The due date was 1968, thereby allowing appropriate time for the completion of the contemplated litigation." Pages 7 and 8, Brief for Appellee, Capital Investors Co. vs. Marian Morrison, No. 10221. (Emphasis added.)

In his brief in No. 10220, directed to Arthur Morrison, counsel for Capital spelled out in greater detail Capital's position in the event of its failure to clear the title to the Rosslyn lands:

"The notes were non-negotiable and therefore subject, in the hands of any holder, to all defenses against Arthur, the payee of them. The consideration given by Arthur for the notes was, inter alia, a warranty deed to the Rosslyn properties. (Exhibit 22). Defect in that deed would have been a defense to payment of the notes on the ground of failure of consideration. Hence, had this litigation, then contemplated, not been successful to establish title in Capital, as assignee of Arthur, the notes would not have been paid. Accordingly, *Arthur's interest was, and continued to be, wholly contingent upon whether it could be established that he actually was beneficial owner of the property as he claimed to be.* . . . Defect in the deed would have been a defense to payment of the notes on the ground of failure of consideration. Moreover, the contract provided that Capital owned, and would own, no assets other than the property rights conveyed to it by

Marian and Arthur, so that *the notes would not be collectible in any event if this litigation failed to establish the title claimed by Marian and Arthur or one of them.*" (Emphasis added.) Pages 6 and 7, Brief of Appellee, Capital Investors Co. vs. Arthur Morrison, No. 10220.

ARGUMENT

A transaction of the kind described by counsel for Capital is precisely such a transaction as was found illegal by this Court in Peck vs. Heurich, supra, and by the Appellate Court in that case. Peck vs. Heurich, 6 App. Div. D. C. 273.

The deeds given by the Morrisons to Capital pursuant to the July contract gave Capital no basis for its suit:

> "The deed, as appears, upon its face, having been made to carry out a champertous agreement was unlawful and passed no title . . . ." Peck vs. Heurich, 167 U. S. 624, 632.

The holding by the Court below that the deeds given Capital pursuant to the champertous contract between itself and the Morrisons passed title to the Rosslyn lands was consequently in complete and obvious conflict with the applicable law established by this Court, and cannot be reconciled with this Court's decision.

The contract which was the basis of this action was made in the District of Columbia and was governed by the law of the District. Restatement of Conflict of Laws, §332. However, if the legality of the contract is considered to be governed by the law of Virginia because of the location of the lands that are the subject of this suit, it would be invalid under that law. The Courts of Virginia regard champertous contracts as illegal and void and conveyances pursuant to such contracts as without legal effect. Seward vs. Camp Mfg. Co., 112 Va. 379,71 S.E. 614; Roller vs. Murray, 107 Va. 527,59 S.E. 421; Ventro vs. Clinchfield Coal Corp., 199 Va. 943,103 S.E. 2nd 254. The decision below is, therefore, in conflict with the decisions of the highest Court of Virginia on the legal issue in question.

For the reasons stated above, respondent requests that the writ for certiorari be granted as to petitioner's question as restated by him.

Respectfully submitted,

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